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TAGS: [PHUM](#) [KJUS](#) [PREL](#) [PINR](#) [EAID](#) [CB](#)
SUBJECT: KHMER ROUGE TRIBUNAL ACHIEVES BENCHMARK OF
CREDIBILITY WITH NEW ARREST

REF: A. PHNOM PENH 1068

- [1](#)B. PHNOM PENH 1059
- [1](#)C. PHNOM PENH 956
- [1](#)D. USUN 571
- [1](#)E. PHNOM PENH 826

Classified By: Ambassador Joseph A. Mussomeli for reasons 1.4 (b, d).

[1](#)1. (C) SUMMARY: The September 19 announcement of the detention of Nuon Chea, Khmer Rouge "brother number two", marks a turning point in the proceedings of the Extraordinary Chambers in the Courts of Cambodia (ECCC). For the first time, a senior KR leader stands in the dock of a credible tribunal. The people of Cambodia are ready to see KR leaders like Nuon Chea brought to justice. In response, international jurists have worked with Cambodians in this hybrid court to bring five initial cases, with more to follow, to try Khmer Rouge leaders and those most responsible for the deaths of over 2 million Cambodians during the KR era. We believe the political environment in Cambodia will permit such a trial without significant interference. Nuon Chea's detention builds on the momentum of the cases brought against five suspects in July (Ref C). The court now has two detainees, the first being the Tuol Sleng (S-21) torture center director named "Duch." A first public trial is expected in early 2008. Management issues (Ref D) and Cambodian mis-steps remain challenges the donors and ECCC staff can overcome. The lack of funding and leadership are pressing issues. The proceedings of the Khmer Rouge Tribunal have reached a point where the USG is in a position to consider whether it could provide both funding and leadership, as well as possibly provide evidence to support the high-profile prosecutions in the form of formerly classified USG documents that the court may soon be seeking. END SUMMARY.

Overview of the KRT

[1](#)2. (C) The ECCC case against Nuon Chea is one of five dossiers the co-investigating prosecutors submitted to co-investigating judges in July (Ref C), in which the names of the suspects were kept in confidence. One legal officer said today the ECCC expects the charges against Nuon Chea to be announced soon and that he would be detained at the ECCC with close medical supervision until he could obtain a lawyer. Although the ECCC earlier detained a suspect, he was not from among the top KR leadership.

[1](#)3. (C) In public fora throughout the country, the people of Cambodia have shown an eagerness to see KR leaders like Nuon Chea brought to justice. Despite remaining challenges in Cambodia's imperfect democracy, our assessment is that the

political environment in Cambodia will permit a trial without significant interference. To date, the Cambodian government has shown itself to be generally respectful of the work of the ECCC, and where mis-steps and mis-statements have been made by Cambodian officials, their effect on the proceedings have either been minimal or eventually corrected in the face of strong and principled UN positions. Building on the momentum of cases brought against the first five suspects in July, legal staff in the ECCC say they are now laying a sound legal foundation on which to try the five and will likely include at least a handful of additional suspects. Key to this effort is the ongoing, time-consuming interview of the other detained suspect: Tuol Sleng (S-21) torture center director Kaing Guek Eav (alias Duch). In this civil law system, much more of the work is done by the prosecutorial and investigative judges behind the scenes. However, we expect a first public trial in early 2008.

The KRT - "Time for Justice"

14. (SBU) A series of public fora held these past months throughout the country called "Justice and National Reconciliation", bring up to 70 provincial persons of all backgrounds (including former mid-ranking Khmer Rouge cadres) to the ECCC compound outside Phnom Penh to see the operation of the courts first hand. This group is then invited to participate with a much larger audience in an open local forum in their home province where the film "Time for Justice" explains the genesis of the Khmer Rouge Tribunal and its mandate to try KR leaders and "those most responsible" for the crimes of the KR era. In question and answer sessions that follow, it is clear that the vast majority of those Cambodians attending want to see justice done - a typical questioner at a September 7 session attended by

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Poloff queried why the KRT hadn't done its work sooner. Some among the audience of 200 wondered why the maximum sentence for the heinous crimes of the KR was life imprisonment - answer: Cambodia does not permit the death sentence. Many were heartened to hear that the ECCC's work would be used as a model for improving Cambodia's court system across the board (an explicit message of the fora and film clearly endorsed by the Cambodian political leadership).

Internal Rules Working To Date

15. (C) According to court staff, the ECCC Internal Rules that took so long to approve (Ref E) are now achieving the desired result - particularly helpful have been provisions on international investigators' interviews of witnesses. Cambodian Director of the ECCC Sean Visoth has stated that the nine months it took the international and Cambodian sides to approve the Internal Rules is actually a period shorter than in most other international tribunals. Post understands that Department is currently evaluating the ECCC Internal Rules for their adherence to international standards. A notable feature of the Internal Rules besides the obviously unique hybrid nature of the court is a provision for jointly re-evaluating and adjusting those rules as the court's proceedings move forward. According to Heather Ryan (PROTECT) of the Open Society Justice Institute, one of the last successes coming out of June negotiations on the Internal Rules was an expansion of the IR review committee membership to include some "heavy hitters" on the international side. With a transparent process to modify rules in the unique "hybrid" court structure, the system appears to be adaptable to international standards. ECCC sources note that the first meeting of the Internal Rules review committee will be in November.

Cases in Full Swing

16. (C) Since the prosecutors' first introductory submissions in mid-July (Ref C), the court has been actively engaged on two fronts: Investigating Judges detained Duch and ECCC staff have been interviewing him continuously in the presence of his lawyers while building the cases surrounding all five KR suspects. The pre-trial chamber of five judges is reviewing an appeal by Duch's lawyers against his provisional detention and on September 4 published a request for amicus curiae briefs - the hearing on the appeal will likely be in early October. One high-ranking investigating official told Poloff that "Duch has a lot to say," and that if given free rein could spend up to two months presenting his testimony. (COMMENT: We believe all parties are focusing the inquiry more sharply and less time will be required. END COMMENT.) Duch's testimony will be the cornerstone of the prosecution's case regarding a "joint criminal enterprise" and given the subtlety of this argument, parties on both sides may want to take more time to be sure they have covered all lines of inquiry. The other three suspects in the original submission -- whose identities the court is holding in confidence -- are: former head of state Khieu Samphan; Ieng Sary, the KR foreign affairs minister; and Ieng Thirith (AKA Khieu Thirith), wife of Ieng Sary and a member of the KR Central Committee. One ECCC official stated that the court would move to detain more of these suspects in the near future, probably in a matter of weeks.

More Cases Coming?

17. (C) On a second front, the prosecutors have been developing further cases over and above the original five suspects. One court official said in early September that more introductory submissions on a handful of additional suspects are expected within the next month or so.

Cambodian Mis-Steps and Mis-Statements: Irritants

18. (C) The hybrid nature of the ECCC derives many benefits from its location inside Cambodia, according to multiple observers. Witnesses and direct evidence are more easily obtained and presented to the court in Cambodia. The people who most benefit from the just outcome sought would be able personally to witness justice in action. Cambodian NGOs believe that a long-overdue process of reconciliation can more readily begin with the trial in country. The justice system in Cambodia will benefit from the conduct of this national trial with international assistance, proponents

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state. Perhaps too keen to reap the benefits from the ECCC's work, the RGC appointed ECCC Prosecuting Judge You Bunleng to be the new President of the Cambodian Appeals Court, counter to the RGC-UN agreement that all judges appointed would remain for the duration of the KRT's proceedings. In the end, the Cambodian government agreed with the UN that Judge You Bunleng would remain in his position at the ECCC. Observers generally agree that the RGC tried to move its most trusted jurist in an awkward, ill-timed attempt to meet the needs of its national judicial development but failed to properly weigh the KRT's needs. The immunity of King Father Sihanouk caused another stir in August-September, but a UN letter to the Royal Palace made it clear that the ECCC would adhere to its principles and not engage in theatrics. (COMMENT: These Cambodian government gaffes show that challenges remain for the KRT's international jurists in ensuring that Cambodian counterparts understand the meaning of the international commitments they have undertaken. END COMMENT.)

ECCC Administration Under Review

19. (C) Both a UNDP audit and review by the UN Office of Legal Affairs (OLA) (Ref D) reveal significant management challenges. The UNDP audit outlines allegations of

corruption in the hiring of Cambodian national staff to the ECCC. (NOTE: Some local observers believe these "ordinary" Asian hiring practices are separate from and have no bearing on the standards of justice, but Head of the ECCC Defense Support Section Rupert Skilbeck points out that defense lawyers will use these allegations to question the KRT's overall credibility. END NOTE.) In a September 7 "ECCC Group of Friends" meeting, ECCC director Sean Visoth noted that some of the UNDP's audit recommendations were being actively pursued. An ECCC Human Resources Management report and procedural manual is expected to be issued on September 19. The ICTY's Deputy Chief of Victims and Witness Section is completing her secondment to the KRT to set up the ECCC Witness and Expert Support Unit. Court management operating procedures are being completed by a former Acting Head of Court Management Section in the Special Court of Sierra Leone. Construction activities in the court area are commencing, beginning with provision for video feeds from the pre-trial chambers, which are going to be made public and should be active in October. (COMMENT: While donors may not feel that the ECCC has resolved all of its management issues, many see a way forward, especially if UN headquarters restructures the management portfolio. END COMMENT.)

Funding is the Critical Issue

¶10. (C) With current monies available, normal operations of the ECCC will only be funded through July 2008, on the UN side and to August 2008, on the Cambodian side, according to the latest financial report released on September 7 (a copy of the latest ECCC quarterly report is being pouched to S/WCI). The original, combined UN/Cambodian cost of the court was estimated to be \$56.3 million, probably well under the court's needs. The latest assessment places the combined cost of operating the Khmer Rouge Tribunal at \$85.64 million through the last quarter of 2009. About \$65 million of this sum is to be administered on the UN side. At least \$2 million of the new requirement on the Cambodian side is to support participation by Cambodian civil parties in the case, a new requirement under the Internal Rules adopted in June. Funding is urgently needed to meet the needs for witness protection, which was not adequately programmed in the initial budget. There also is significantly more need for translation services for this three-language process (Khmer, English, French) than was originally budgeted. Sources connected to some of the initial submissions say that significant numbers of Khmer-language documents have been submitted to the Investigating Judges with a simple note "translation requested." How the Judges can now swiftly bring an indictment on the original five cases in the absence of proper translation is a major quandary.

¶11. (SBU) The ECCC administration - UNAKRT and the Cambodia - have stated that a UN pledging drive to seek support for the ECCC is tentatively slated for mid-October. A venue for the drive has not yet been selected, although some members of the Friends Group suggest that New York is a likely choice, given its larger pool of potential donors. Since only \$48.34 million of the originally pledged \$56.3 million has actually been committed to date, the UN will be seeking another \$36.8 million, including about \$29.34 million to cover new or unanticipated costs.

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Wanted: Leadership Among Donors

¶12. (C) In addition to funding, what is needed from the donors by the ECCC's driven international jurists and Cambodian counterparts in the court is leadership. The U.S. could offer such leadership if a decision is taken to support the ECCC. Should funding or other forms of direct assistance be made available, then the U.S. could have a more direct say in the management approach, the overall objectives of the

ECCC, and some of the special requirements such as witness protection. International Investigating Judge Marcel Lemonde (PROTECT) told us recently that in his thirty years as a judge under the same civil law procedures used in the ECCC, he had always upheld the rule of law and was not about to change now. He would not want to leave as his legacy anything other than respected international trial proceedings. If he did not think the Khmer Rouge tribunal was capable of achieving that goal, he would not feel compelled to spend one more day in the ECCC. But, given that the process was moving forward so well and so quickly, it was imperative that the international donor appeal also succeed in order to support the justice process in the Khmer Rouge Tribunal. Judge Lemonde was looking for U.S. support of a credible ECCC, just as his staff, the prosecution, and the defense legal staff have also expressed their desire to see U.S. support and leadership in this important international tribunal (Ref A).

Comment: A Time to Decide?

¶13. (C) With Nuon Chea's detention and, for the first time, a KR leader being in the dock of the Khmer Rouge Tribunal (KRT), the view from the ground is that the time is ripe to take a decision on the capability of the KRT to achieve a just outcome according to international standards. The court is actively seized with the most important cases and reportedly will soon expand its caseload. Although so much of the activity of the court in this civil law-based criminal proceeding is done behind the scenes, the court has taken care to be as transparent as possible so that justice can be seen to be done. As many international jurists have remarked, it is impossible to tell if international standards have truly been met in a tribunal like this until the work of the KRT is completed and all appeals have been heard and decided. In the meantime, the Cambodian populace is waiting for its "Time for Justice", and we are in a position to help in that genuine effort.
MUSSOMELI